

**STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

Supreme Court No. 141837
Court of Appeals No. 294840
Ottawa CC: 09-03445-FH

v.

ANGEL MORENO, JR.,

Defendant/Appellant.

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BRIEF BY MICHIGAN ASSOCIATION FOR JUSTICE AS AMICUS CURIAE



TABLE OF CONTENTS

INTEREST OF AMICUS CURIAE	ii
STATEMENT OF ISSUES	1
STATEMENT OF FACTS	
ARGUMENT	2
I. <u>WHETHER A PERSON PRESENT IN HIS/HER OWN HOME CAN LAWFULLY RESIST A POLICE OFFICER WHO UNLAWFULLY AND FORCIBLY ENTERS THE HOME, WITHOUT VIOLATING MCL 750.81d</u>	
II. <u>IF NOT, WHETHER, SO INTERPRETED, 750.81d IS UNCONSTITUTIONAL</u>	
III. <u>WHETHER A DEFENDANT PROSECUTED UNDER MCL 750.81d FOR RESISTING A POLICE OFFICER WHO UNLAWFULLY AND FORCIBLY ENTERS THE DEFENDANT'S HOME MAY CLAIM SELF-DEFENSE</u>	
CONCLUSION.....	2

INTEREST OF AMICUS CURIAE

The Michigan Association for Justice (hereinafter MAJ) is an organization of Michigan lawyers engaged primarily in litigation and trial work. MAJ recognizes an obligation to assist this Court on important issues of law that would substantially affect the orderly administration of justice in the trial courts of this state. This case presents important issues of law, the resolution of which are important to jurisprudence in this state, and will have a direct and substantial impact on MAJ members' clients who are injured and seek compensation through litigation.

This case in particular involves the constitutional rights of Michigan citizens, and will have a direct result on the manner in which those rights may be validly exercised, or dispensed with altogether.

STATEMENT OF ISSUES

I. WHETHER A PERSON PRESENT IN HIS/HER OWN HOME CAN LAWFULLY RESIST A POLICE OFFICER WHO UNLAWFULLY AND FORCIBLY ENTERS THE HOME, WITHOUT VIOLATING MCL 750.81d

Plaintiff/Appellee answered, "No."

Defendant/Appellant answered, "Yes."

Court of Appeals answered, "No."

Trial Court answered, "No."

Amicus answers, "Yes."

II. IF NOT, WHETHER, SO INTERPRETED, 750.81d IS UNCONSTITUTIONAL

Plaintiff/Appellee answered, "No."

Defendant/Appellant answered, "Yes."

Court of Appeals answered, "No."

Trial Court answered, "No."

Amicus answers, "Yes."

III. WHETHER A DEFENDANT PROSECUTED UNDER MCL 750.81d FOR RESISTING A POLICE OFFICER WHO UNLAWFULLY AND FORCIBLY ENTERS THE DEFENDANT'S HOME MAY CLAIM SELF-DEFENSE

Plaintiff/Appellee answered, "No."

Defendant/Appellant answered, "Yes."

Court of Appeals answered, "No."

Trial Court answered, "Yes."

Amicus answers, "Yes."

IV. WHETHER THE EXIGENT CIRCUMSTANCES EXCEPTION TO THE WARRANT REQUIREMENT APPLIES WHERE A POLICE OFFICER SMELLS BURNING OR BURNT MARIJUANA WHILE STANDING BY AN OPEN DOORWAY OF A HOUSE AND WHETHER ENTRY IS NECESSARY TO PREVENT THE IMMIDENT DESTRUCTION OF EVIDENCE

Plaintiff/Appellee answered, "Yes."

Defendant/Appellant answered, "No."

Court of Appeals did not answer.

Trial Court answered, "No."

Amicus answers, "No."

STATEMENT OF FACTS

Amicus joins the Statement of Facts of Defendant/Appellant Angel Moreno.

ARGUMENT

I. WHETHER A PERSON PRESENT IN HIS/HER OWN HOME CAN LAWFULLY RESIST A POLICE OFFICER WHO UNLAWFULLY AND FORCIBLY ENTERS THE HOME, WITHOUT VIOLATING MCL 750.81d

Amicus concurs with the position taken by Defendant/Appellant Angel Moreno.

II. IF NOT, WHETHER, SO INTERPRETED, 750.81d IS UNCONSTITUTIONAL

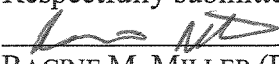
Amicus concurs with the position taken by Defendant/Appellant Angel Moreno.

III. WHETHER A DEFENDANT PROSECUTED UNDER MCL 750.81d FOR RESISTING A POLICE OFFICER WHO UNLAWFULLY AND FORCIBLY ENTERS THE DEFENDANT'S HOME MAY CLAIM SELF-DEFENSE

Amicus concurs with the position taken by Defendant/Appellant Angel Moreno.

CONCLUSION

Amicus Curiae Michigan Association for Justice respectfully request that this Honorable Court recognize the tremendous impact their ruling in this case will have on not only criminal defense matters, but also on the constitutional rights of citizens, the press, in the litigation of civil cases brought under 42 USC 1983 for compensation related to constitutional violations, and child custody proceedings involving the removal of children from the home - and grant the relief sought by Defendant/Appellant.

Respectfully submitted,
By: 
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